





Sewerage & Water Board of NEW ORLEANS

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Clerk of the Board

Civilian Board of Contract Appeals (CBCA) 1800 F ST., NW, Washington, 20405 Sixth Floor, 1800 M St. NW Washington, DC 20036

Date: October 15, 2009

Suspense 501

Re:

Sewerage & Water Board of New Orleans – Disaster# 1603 FIPS # 071-06A69-00

Arbitration Request of Project Worksheets 13231 and 18528.

Dear Arbitration Panel,

Please accept this correspondence as the Sewerage and Water Board of New Orleans' official request to have Pw#13231 and 18528 administered through the American Recovery and Reinvestment Act of 2009.

Impact of Katrina and the failures of the Federal levees system on the S&WB

The Sewerage and Water Board of New Orleans has a long and significant history. It was created in 1896 by the State Legislature in response to a demand for elimination of open sewerage and poor drainage.

Prior to Hurricane Katrina the Board was financially sound and had a productive capital program that maintained our Water, Sewer and Drainage system. With a staff of 1,200 the Board was able to respond to the preventive maintenance requirements to maintain its massive system. Today, the Board has approximately only 900 employees. We were looking forward to continuing to provide reliable services to the citizens of New Orleans, however, on August 29, 2005, Hurricane Katrina impacted Southeast Louisiana and the Gulf Coast of Mississippi and Alabama.

The resulting breach and overtopping of the federal levee system flooded all but 20% of the City of New Orleans/Orleans Parish. The exception of Algiers (the Westbank portion of the City) and what has come to be known as the "Sliver by the River", roughly described as that area between St. Charles Avenue on the North, and the Mississippi River on the South, very roughly from the Carrollton

Civilian Board of Contract Appeals (CBCA) October 15, 2009 Page 2 of 5

Avenue/St. Charles Avenue intersection area in the west thru the Audubon Park area, Uptown, Lower Garden District, Warehouse District, Part of the CBD, the French Quarter, and part of Fauborg Marigny

in the east. The remaining approximately eighty percent (80%) of the City was flooded and uninhabitable.

The Westbank (Algiers) portion of the City never lost water pressure, and the Algiers Water Plant, at times, literally and figuratively, a beacon in the night, and at first the only operating water plant in the entire area, supplied water, via Water Tank Trucks, to all comers, including the military, FEMA, the hotels, and the cruise ships providing living accommodations to thousands of displaced City employees and their families.

The international technical community estimated that once the levees were sealed, it would take about 3 - 4 months to dewater (their term)/drain the City, about 6 months to restore the Drinking Water System, and about 1 year to restore the Wastewater (Sewerage) System.

The City was declared drained on September 19, 2005, about three (3) weeks after the storm - Not the predicted 3 - 4 months.

With regards to the Water System, water pressure for fire protection was restored on September 6, 2005, about one (1) week after the storm. Potable water was restored to the area between the 17th Street Canal and the Industrial Canal (from the River to the Lake) on October 5, 2005, or about five (5) weeks after the storm - not the predicted 6 months.

Potable water was restored to almost all of the area east of the Industrial Canal on December 8, 2005, or about fourteen (14) weeks after the storm - again, not the predicted six (6) months, or twenty-four (24) weeks.

Today the Sewerage and Water Board is still experiencing the impacts of Katrina, impacting the sewer, water and drainage Systems. Still today the Boards Water system has not been restored to it Pre-Katrina water production capacity due to high volumes of water leaks. Also numerous sewer stations continue to operate on portable pumps, half the capacity of the station. An underpass drainage station still has not been repaired. The above is due to the overall destruction of the Board system and the time it takes to design and construct new faculties. If that were not enough, the Board still finds itself working through the FEMA process to get version and scope alignment so that it can begin the bid and construction process to restore its systems.

Project History

In early 2006, the S&WB requested that FEMA fund the installation of a standby generator at the East Bank Wastewater Treatment Plant. Subsequently, FEMA wrote project worksheet 13231 for "preliminary engineering to assess alternate sources of power to the plant. On 8/16/06, this project was classified by FEMA "ineligible as written"

Civilian Board of Contract Appeals (CBCA) October 15, 2009 Page 3 of 4

During ensuing discussions, the Sewerage and Water Board was counseled by FEMA to request project funding to three separate mechanisms:

- 1: A version to the PW based on the Codes and Standards Policy,
- 2: A version to the PW incorporating 406 Hazard Mitigation Funding,
- 3: And funding through 404 Hazard Mitigation Grant Program.

Following FEMA's recommendation, the S&WB sought funding from all three resources to no avail.

Case History

7/3231

On September 22, 2008 the Sewerage and Water Board formally requested that FEMA amend PW in recognition of their Codes & Standards Policy. Consequently, via written correspondence dated November 17, 2008, Jim Stark (Director Of Louisiana Transitional Recovery Office) responded: (BATES STAMP 00069)

"FEMA understands that the generator did not exist prior to Hurricane Katrina. Therefore, the activity is not eligible under the 406 hazard mitigation policy or FEMA 322) standards and a version request is not possible".

On February 19th 2009, PW 18528 was written stating that "Overall the applicant has requested redundant/back-up system in addition to current dual power source from Entergy. FEMA continues to hold the same position and deems this project to be ineligible for funding, therefore this PW will be assigned a value of zero dollars." (BATES STAMP 00023)

The Sewerage and Water Board's position is, the operating permit required by the State of Louisiana Department of Environmental Quality (DEQ) and conjunction with the United States Environmental Protection Agency (EPA) to operate a wastewater treatment plant has been affected by the disaster. Whereas, the permit stipulates that "the Permittee (Sewerage and Water Board of New Orleans) shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the Permittee to achieve compliance with the conditions of the permit Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of the backup or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit" (BATES STAMP 00075) The damaged element of this permit requires a backup power supply that must be in place for the wastewater treatment plant to operate. The Board has entered into a contract to place a secondary power source in the form of a generator to ensure that the Board's backup power supply is restored to its pre-Katrina functionality as defined in its permit to operate.

The Federal Emergency Management Agency (FEMA) assiduous denials for funding related to our required compliance with Environmental Protection Agency (EPA) standards, as detailed in the attached EPA Order entitled Emergency Order Responding to Hurricane Katrina Aftermath. (BATES STAMP 00067) and (BATES STAMP 00077)

FEMA has taken the position that the generator was not in place prior to Hurricane Katrina and is not a damaged entity under public assistance. However, in our appeals we have demonstrated that the damaged entity is the backup power supply that is required for State Department of Environmental Quality (DEQ) permit which has not been restored. Therefore the Board has not been restored to its pre-Katrina function as a result of losing our backup power supply. Also the Board has

Civilian Board of Contract Appeals (CBCA) October 15, 2009 Page 4 of 4

provided documentation in this arbitration request that supports its position using the Environmental Protection Agencies order that we place a backup generator as secondary power to the plant.

Sought Resolution

Without the addition of a 4-meg emergency generator unit, the operation of the East Bank wastewater treatment plant during and after a hurricane or tropical storm event is tenuous at best and will again suffer through costly repairs and environmentally dangerous plant bypass events. Therefore, FEMA should agree to fund this project as a damaged element as defined in 44 CFR 206.226(c.1) and under Code of Federal Regulations as defined in 44 CFR 206.226(d). The Board appreciates in advance the Arbitration Panel support in funding this critical Permit requirement. Whether the funding is in the form of a new PW or an amendment (version) to PW 13231, or 18528, we look forward to having this eligible project funded for an estimated cost of \$6 million dollars.

In closing, the Board is requesting to have a face-to-face hearing in response to this request. Please notify my office of the time date and location that this arbitrary hearing will be facilitate. The Board again appreciates the support of this arbitration panel, and will be happy to provide any additional information required. If you have any questions or concerns regarding this correspondence, please contact me at (504)218-3235.

As the Board's contact for this arbitration process please note my contact information as follows:

Mr. Jason Higginbotham,LEM 625 St.Joseph Street Room 117 New Orleans,La70165 Office:504 585 2015

Cell: 504-218-3235 Fax: 504-522-8721

Email:Jhigginbotham@swbno.org

Sincerely,

Jason Higginbotham, L.E.M.

Director of Emergency Management & Applicant's Authorized Representative

Attachments

Backup Documentation Book

CC:

Gary Jones, Acting Regional Administrator w/attachments Mr. Mark Riley, Deputy Director Louisiana GOHSEP

w/attachments